

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	CR. NO. <u>2:06cr0032-MHT</u>
)	
JEROME LAVERNE HARRIELL)	

MOTION FOR LEAVE TO AMEND INDICTMENT

The United States of America moves this Court for Leave to Amend the Indictment in this case. In support thereof, the United States submits the following:

1. On January 20, 2006, a grand jury sitting for this district returned a three-count indictment against Defendant Harriell. In drafting the indictment, the United States inadvertently committed a typographical error. Specifically, in Counts 1 and 2, the Indictment erroneously states that the offense occurred in Montgomery County when it should have stated that the offense occurred in Chilton County. Count 3 correctly states that the offense occurred in Chilton County.

2. The United States acknowledges that a substantive amendment to an indictment after it has been returned by a grand jury is reversible error. See generally, Stirone v. U.S., 361 U.S. 212 (1960) (amendment to indictment violates the 5th Amendment Grand Jury Clause). However, if the amendment is merely to correct a clerical error, the amendment is permissible. U.S. v. Diaz, 190 F.3d 1247, (11th Cir. 1999)(no impermissible amendment of indictment when merely to correct nonprejudicial typographical error). Here the sole purpose of the amendment is to correct a clerical error. The amendment is not substantive or prejudicial. Therefore, it amendment is permissible.

3. Defense counsel Jennifer Hart and Mickey L. Johnson have been contacted and advised that they do not object to this amendment.

Therefore the United States respectfully requests leave to amend the indictment to correct the aforementioned language.

Respectfully submitted this the 28th day of February, 2006.

LEURA G. CANARY
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CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Jennifer Hart, Esq. and Mickey L. Johnson, Esq.

Respectfully submitted,

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